



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 202

**[Docket No. FR-5536-F-02]
RIN 2502-AJ00**

**Federal Housing Administration (FHA) Approval of Lending Institutions and Mortgagees:
Streamlined Reporting Requirements for Small Supervised Lenders and Mortgagees**

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule streamlines the FHA financial statement reporting requirements for lenders and mortgagees who are supervised by federal banking agencies and whose consolidated assets do not meet the thresholds set by their supervising federal banking agencies for submission of audited financial statements (currently set at \$500 million in consolidated assets). HUD's regulations currently require all supervised lenders and mortgagees to submit annual audited financial statements as a condition of FHA lender approval and recertification. Through this rule, in lieu of the annual audited financial statements, small supervised lenders and mortgagees would be required to submit their unaudited financial regulatory reports that align with their fiscal year ends and are required to be submitted to their supervising federal banking agencies. Small supervised lenders and mortgagees would only be required to submit audited financial statements if HUD determines that the supervised lenders or mortgagees pose heightened risk to the FHA insurance fund.

This rule does not impact FHA's annual audited financial statements submission requirement for nonsupervised and large supervised lenders and mortgagees. The rule also does not impact those supervised lenders and mortgagees with consolidated assets in an amount that

requires that lenders or mortgagees submit audited financial statements to their respective supervising federal banking agencies. Additionally, this final rule, consistent with the proposed rule, makes three technical changes to current regulations regarding reporting requirements for FHA-approved supervised lenders and mortgagees.

DATES: Effective Date: **[Insert date 30 days from the date of publication in the Federal Register]**.

FOR FURTHER INFORMATION CONTACT: Richard Toma, Deputy Director, Office of Lender Activities and Program Compliance, Office of Housing, Department of Housing and Urban Development, 490 L'Enfant Plaza East, SW, Room P3214, Washington, DC 20024-8000; telephone number 202-708-1515 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION

I. Background

On April 18, 2013 (78 FR 23178), HUD published for public comment a proposed rule that would streamline reporting requirements and relieve burden on small supervised lenders and mortgagees.¹ HUD's regulations, at 24 CFR 202.5(g), require that all lenders and mortgagees provide annual audited financial statements within 90 days of their fiscal year ends. Small supervised lenders and mortgagees, however, are not required by their supervising federal banking agencies to submit audited financial statements, but are permitted to submit unaudited

¹ The term "small supervised lenders and mortgagees" refers to those lenders and mortgagees supervised by the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation (FDIC); and the National Credit Union Administration (NCUA) (collectively, the "federal banking agencies") whose consolidated assets do not meet the thresholds set by their supervising federal banking agencies for submission of audited financial statements (currently set at \$500 million in consolidated assets).

financial regulatory reports. These unaudited financial regulatory reports currently include a consolidated or fourth quarter Report of Condition and Income (Federal Financial Institutions Examination Council forms 031 and 041, also known as the “Call Report”), a consolidated or fourth quarter Thrift Financial Report, and a consolidated or fourth quarter NCUA Call Report (NCUA Form 5300 or 5310). The HUD requirement is therefore inconsistent with that of the federal banking agencies, and has the potential to impose a potentially financially prohibitive requirement on small supervised lenders and mortgagees who wish to participate in FHA programs. While HUD takes its counterparty risk management responsibilities seriously, HUD also seeks to balance its management of risk with the execution of its mission.

Upon reconsideration, HUD has determined that the financial regulatory reports required by the federal banking agencies contain sufficient information for HUD to ensure that small supervised lenders and mortgagees are suitably capitalized to meet potential needs associated with their participation in FHA lending programs. Accordingly, HUD issued the April 18, 2013, proposed rule to bring its reporting requirements for small supervised lenders mortgagees into alignment with that of the federal banking agencies. In addition to the streamlined reporting requirements, HUD proposed to make three conforming amendments to current regulations, which are also made final by this rule. Interested readers should refer to the preamble of the April 18, 2013, proposed rule for additional information on the proposed regulatory change.

II. This Final Rule

This final rule follows publication of the April 18, 2013, proposed rule and takes into consideration the public comments received on the proposed rule. The public comment period on the proposed rule closed on June 17, 2013. HUD received 6 public comments. Commenters included a savings bank, banker and home builder associations, and credit unions. All public

comments supported the proposed rule. Section III of this preamble discusses the comments received on the proposed rule. HUD has decided to adopt the proposed rule as final with no substantive changes. HUD, however, has taken the opportunity afforded by this final rule to reorganize § 202.5(g), for clarity purposes only.

A. Streamlined Reporting Requirements for Small Supervised Lenders and Mortgagees

This final rule amends § 202.5(g) and adds a new (c) to § 202.6, Supervised Lenders and Mortgagees, that exempts small supervised lenders and mortgagees from submitting a copy of an audited financial statement. Small supervised lenders and mortgagees are instead required, within 90 days of their fiscal year end, to furnish to HUD the unaudited financial regulatory report that aligns with the small supervised lender's or mortgagee's fiscal year end and that the small supervised lender or mortgagee is required to submit to their respective federal banking agency. In order to manage the risk to the FHA insurance fund, HUD retains the right to request additional financial documentation, up to and including audited financial statements, if HUD determines that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund.

HUD may determine that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund based upon, but not limited to, one or more of the following factors: (1) failing to provide required financial submissions under § 202.6(c)(2) within the required 90-day period following the lender's or mortgagee's fiscal year end; (2) maintaining insufficient adjusted net worth or unrestricted liquid assets as required by § 202.5(n); (3) reporting opening cash and equity balances that do not agree with the prior year's reported cash and equity balances; (4) experiencing an operating loss of 20 percent or greater of the lender's or mortgagee's net worth for the annual reporting period as governed by § 202.5(m)(1); (5)

experiencing an increase in loan volume over the prior 12-month period, determined by the Secretary to be significant; (6) undertaking significant changes to business operations, such as a merger or acquisition; and (7) other factors that the Secretary considers appropriate in indicating a heightened risk to the FHA insurance fund.

B. Technical Amendments

As noted earlier in this preamble, the April 18, 2013, proposed rule contained three conforming amendments to current regulations regarding reporting requirements for FHA-approved supervised lenders and mortgagees. These nonsubstantive amendments, which are adopted without change by this final rule, will codify existing requirements and correct a regulatory citation. The amendments are as follows:

1. Audited financial statement for large supervised lenders and mortgagees. This rule adds subparagraph (b)(4) to § 202.6 to clarify that annual audited financial statements required to be submitted by supervised lenders and mortgagees are to be submitted in accordance with the same requirements as those applicable to nonsupervised institutions under § 202.7(b)(4).

Additionally, as referenced above, it exempts small supervised lenders and mortgagees from the requirement to submit audited financial statements.

2. Technical correction to uniform financial reporting standards. This rule makes a conforming amendments to § 5.801(a)(5) by removing loan correspondents and adding supervised lenders and mortgagees. Section 5.801 requires conformance with the uniform financial reporting requirements if HUD requires the submission of financial information.

3. Technical correction to § 202.3(b). This rule replaces an incorrect citation in § 202.3(b) by removing the reference to § 202.5(n)(2) and inserting the correct citation to § 202.5(m).

III. Discussion of Public Comments

The following section presents a summary of the public comments in response to the April 18, 2013, proposed rule, and HUD's response.

All commenters supported HUD's proposed rule permitting small supervised lenders and mortgagees to submit their financial regulatory reports required by their respective federal banking agencies in place of annual audited financial statements. Commenters also supported HUD's decision to retain the right to require audited financial statements when they determine, based on the proposed list of relevant factors, that an entity poses a heightened risk to the FHA insurance fund. A number of commenters emphasized the important role of community banks in the communities they serve that may not have access to larger lenders and mortgagees. In addition, the commenters noted that community bank residential mortgage lending activities have posed very little risk to the insurance fund, but requiring community banks to finance annual audited financial statements may result in community banks no longer offering homebuyers FHA loans.

One commenter requested that in addition to no longer requiring the submission of annual audited financial statements for small supervised lenders and mortgagees, HUD no longer require costly internal control and compliance audit requirement imposed on small supervised lenders and mortgagees.

In response to the comment, HUD clarifies that small supervised lenders and mortgagees, as a result of this rule, are no longer required to submit internal control and compliance reports. Internal control and compliance reports are a part of the annual audit report. Therefore, exempting small supervised lenders and mortgagees from submitting annual financial audits required by § 202.5(g) and § 202.6(b)(4) means they are also not subject to the internal control

and compliance report requirement. If, however, the Secretary determines that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund under § 202.6(c)(3), the Secretary can require the submission of additional information, including internal control and compliance reports.

IV. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2506-0085. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would not have a significant economic impact on a substantial number of small entities because the rule is specifically intended to ease the regulatory burden on small entities. The current regulations require full independent audited financial statements, over and above what is required by federal banking agencies in their oversight of these small supervised lenders and mortgagees. This rule would bring HUD's reporting practices in line with that of the federal banking agencies and reduce the cost of participating in FHA programs by releasing small supervised lenders and

mortgagees from the requirement to submit annual audited financial statements. Instead, the rule would require the submission of the unaudited financial regulatory report already required by the small supervised lender's or mortgagee's supervising federal banking agency. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction. Nor does it establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. This rule is limited to the procedures governing the submission of financial reports by small supervised lenders and mortgagees applying to participate, or recertifying for participation, in FHA's single-family programs. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the principal FHA single-family mortgage insurance program is 14.117.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs-housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 5 and

202 to read as follows:

PART 5 – GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

AUTHORITY: 42 USC 3535, 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109-115, 119 Stat. 2936, and Sec. 607, Pub. L. 109-162, 119 Stat. 3051.

2. Revise § 5.801 paragraph (a)(5) to read as follows:

§ 5.801 Uniform financial reporting standards.

(a) * * *

(5) HUD-approved Title I and Title II supervised and nonsupervised lenders and mortgagees.

* * * * *

PART 202 – APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

3. The authority citation for part 202 continues to read as follows:

AUTHORITY: 12 U.S.C. 1703, 1709 and 1715b; 42 U.S.C. 3535(d).

4. In § 202.3 paragraph (b), remove the citation “§ 202.5(n)(2)” and add in its place “§ 202.5(m)”.

5. Revise § 202.5 paragraph (g) to read as follows:

§ 202.5 General approval standards.

* * * * *

(g) Financial statements. The lender or mortgagee shall:

(1) Furnish to the Secretary a copy of its audited financial statements within 90 days of its fiscal year end, except as provided in § 202.6(c);

(2) Furnish such other information as the Secretary may request; and

(3) Submit to an examination of that portion of its records that relates to its Title I and/or Title II program activities.

* * * * *

6. In § 202.6, add new paragraphs (b)(4) and (c) to read as follows:

§ 202.6 Supervised lenders and mortgagees.

* * * * *

(b) * * *

(4) Audit report. Except as provided in paragraph (c) of this section, a lender or mortgagee must:

(i) Comply with the financial reporting requirements in 24 CFR part 5, subpart H. Audit reports shall be based on audits performed by a certified public accountant, or by an independent public accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, and shall include:

(A) Financial statements in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings, a statement of cash flows, an analysis of the lender's or mortgagee's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and

(B) Such other financial information as the Secretary may require to determine the accuracy and validity of the audit report.

(ii) Submit a report on compliance tests prescribed by the Secretary.

(c) Financial statement requirements for small supervised lenders and mortgagees.

(1) Definitions. For the purposes of this section, the following definitions apply:

(i) Federal banking agency means the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; and the National Credit Union Administration; or any successor agency thereof.

(ii) Small supervised lender or mortgagee means a supervised lender or mortgagee possessing consolidated assets below the threshold for required audited financial reporting as established by the federal banking agency that is responsible for the oversight of that supervised lender or mortgagee.

(2) Financial statement requirements. Small supervised lenders and mortgagees shall not be subject to the requirement to submit a copy of an audited financial statement under § 202.5(g) and the audit report requirements under paragraph (b)(4) of this section. Small supervised lenders and mortgagees are required, within 90 days of their fiscal year end, to furnish to the Secretary the unaudited financial regulatory report—a consolidated or fourth quarter Report of Condition and Income (Federal Financial Institutions Examination Council forms 031 and 041, also known as the “Call Report”), a consolidated or fourth quarter Thrift Financial Report, or a consolidated or fourth quarter NCUA Call Report (NCUA Form 5300 or 5310), or such other financial regulatory report as may be required—that aligns with the small supervised lender’s or mortgagee’s fiscal year end and that the small supervised lender or mortgagee is required to submit to their respective federal banking agency.

(3) Requirement for audited financial statement and other information based on determination of heightened risk to the FHA insurance fund. If the Secretary determines that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund, the lender or mortgagee must provide, upon request, additional financial documentation, up to and including an audited financial statement, and other information as the Secretary determines necessary. The Secretary may determine that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund based upon, but not limited to, one or more of the following factors:

(i) Failing to provide required financial submissions under § 202.6(c)(2) within the required 90-day period following the lender's or mortgagee's fiscal year end;

(ii) Maintaining insufficient adjusted net worth or unrestricted liquid assets as required by § 202.5(n);

(iii) Reporting opening cash and equity balances that do not agree with the prior year's reported cash and equity balances;

(iv) Experiencing an operating loss of 20 percent or greater of the lender's or mortgagee's net worth for the annual reporting period as governed by § 202.5(m)(1);

(v) Experiencing an increase in loan volume over the prior 12-month period, determined by the Secretary to be significant;

(vi) Undertaking significant changes to business operations, such as a merger or acquisition; and

(vii) Other factors that the Secretary considers appropriate in indicating a heightened risk to the FHA insurance fund.

Dated: September 9, 2013

Carol J. Galante
Assistant Secretary for Housing –
Federal Housing Commissioner

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